

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable Inc.)	CSR 7711-E
)	
Time Warner NY Cable LLC)	CSR 7708-E
)	
CAC Exchange I, LLC)	CSR 7712-E
)	
Petitions for Determination of Effective)	
Competition in Six California Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: May 7, 2008

Released: May 8, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable LLC, Time Warner NY Cable LLC, and CAC Exchange I, LLC hereinafter referred to as "Petitioners," have filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission's rules for determinations that Petitioners are subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioners allege that their cable systems serving the communities listed on Attachment B and hereinafter referred to as "Group B Communities" are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act")¹ and the Commission's implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and Dish Network ("Dish"). Petitioner Time Warner NY Cable LLC additionally claims to be exempt from cable rate regulation in the community listed on Attachment C and hereinafter referred to as the "Group C Community" because it serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the Petitions based on our finding that Petitioners are subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that the Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability. The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁸ Petitioners have demonstrated that this is the case.⁹ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.¹⁰ Petitioners indicate that the program offerings are available on the websites of both DIRECTV and Dish, and we have reviewed their websites and confirmed that their program offerings meet the test.¹¹ Also undisputed is Petitioners’ assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹² Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioners assert that they are the largest MVPDs in the Group B Communities.¹³ Petitioners sought to determine the competing provider penetration in the Group B Communities by purchasing subscriber tracking reports from the Satellite Broadcasting and Communications Association (“SBCA”)

⁶47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

⁹ Petition CSR 7711-E at 4-5, 6-7; Petition CSR 7708-E at 4-5, 7-8; Petition CSR 7712-E at 4-5, 7-8.

¹⁰See 47 C.F.R. § 76.905(g). See also Petition CSR 7711-E at 5; Petition CSR 7708-E at 5; Petition CSR 7712-E at 5-6.

¹¹See Petition CSR 7711-E at 5-6; Petition CSR 7708-E at 6; Petition CSR 7712-E at 6.

¹²See Petition CSR 7711-E at 6; Petition CSR 7708-E at 6; Petition CSR 7712-E at 7.

¹³Petition CSR 7711-E at 6-7; Petition CSR 7708-E at 7; Petition CSR 7712-E at 7.

that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five-digit zip code basis and using a five-digit allocation formula previously approved by the Commission.¹⁴

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁵ as reflected in Attachment A, we find that Petitioners have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for the Group B Communities.

8. Based on the foregoing, we conclude that Petitioners have submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioners are subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁶ Petitioner Time Warner NY Cable LLC alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the Group C Community.

10. Based upon the subscriber penetration level calculated by Time Warner NY Cable LLC, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Community. Therefore, the low penetration test is also satisfied as to the Group C Community.

¹⁴Petition CSR 7711-E at 7; Petition CSR 7708-E at 7; Petition CSR 7712-E at 7-8. *See also*, Charter Communications Properties, LLC, 17 FCC Rcd 4617 (2002). Charter Communications, 17 FCC Rcd 15491 (2002); Falcon First, Inc., 17 FCC Rcd 16629 (2002); Falcon Community Cable, L.P., 17 FCC Rcd 22162 (2002); Charter Communications, LLC, 19 FCC Rcd 7003 (2004).

¹⁵Petition CSR 7711-E at 7 and Exhibit E; Petition CSR 7708-E at 7 and Exhibit E; Petition CSR 7712-E at 8 and Exhibit E.

¹⁶47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for determination of effective competition filed in the captioned proceedings by Time Warner Cable LLC, Time Warner NY Cable LLC, and CAC Exchange I, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁷47 C.F.R. § 0.283.

ATTACHMENT A**CSRs 7711-E, 7708-E, 7712-E****COMMUNITIES SERVED BY TIME WARNER CABLE LLC**

Communities	CUID(S)
Oxnard	CA0396
Ventura	CA0024

COMMUNITIES SERVED BY TIME WARNER NY CABLE LLC

Communities	CUID(S)
Carlsbad	CA0716
San Marcos	CA0739
Vista	CA0877
West Hollywood	CA0254

COMMUNITIES SERVED BY CAC EXCHANGE I, LLC

Communities	CUID(S)
West Hollywood	CA0254

ATTACHMENT B

CSRs 7711-E, 7708-E, 7712-E

COMMUNITIES SERVED BY TIME WARNER CABLE LLC

Communities	CUID	CPR*	2000 Census Household	Estimated DBS Subscribers
Oxnard	CA0396	17.74	43576	7732
Ventura	CA0024	34.54	38524	13307

COMMUNITIES SERVED BY TIME WARNER NY CABLE LLC

Communities	CUID	CPR*	2000 Census Household	Estimated DBS Subscribers
Carlsbad	CA0716	15.30	31521	4823
San Marcos	CA0739	16.84	18111	3051

COMMUNITIES SERVED BY CAC EXCHANGE I, LLC

Communities	CUID	CPR*	2000 Census Household	Estimated DBS Subscribers
West Hollywood	CA0254	21.89	23120	5062

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSRs 7708-E

COMMUNITIES SERVED BY TIME WARNER NY CABLE LLC

Communities	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Vista	CA0877	28877	3712	12.85